tenant, who was after all her husband in the demised premises?

On the evidence, however, the tenant contended that no proof was adduced that the offence or illegality complained of was committed in the demised premises, and therefore the landlord had not made out his case. Now section 16(1)(d) of the Control of Rent Act, 1966 enacts that no order for the recovery of possession of any controlled premises or any part thereof comprised in a tenancy shall be made or given except

(d) where the tenant or any person residing or lodging with him.... has been guilty..... of using or permitting the use of the controlled premises for illegal or immoral purposes.....

In bringing his claim within the scope of section 16(1)(d), the landlord relied on the proof of the conviction of the tenant's wife on a charge of assisting in carrying on a public lottery at the premises No. 17, Pike Street, Menglembu. It was true that the charge did not specify that the lottery was carried on in that part of the controlled premises which was let to the tenant, but the incidence of letting covenanted for quiet possession only of that part let and it seems to me that if the tenant contended that he or any person residing with him had any right to any other part of the premises and that the offence was committed in that other part and not in the demised part, then it was for him to raise this issue on the pleadings and for him to establish it on a balance of probabilities, by way of answer to the landlord's claim.

At the appeal, learned counsel made a further point which he did not raise in the court below, but of course inadmissible evidence does not become admissible merely because of the failure of counsel to object to it when it was sought to be admitted. He now says, relying on *She Eng Gek* v. *D. A. de Silva*,[7] the conviction was wrongly admitted. It is however undeniable that the tenant's wife had pleaded guilty to the charge and the judgment of Buhagiar J. is clearly against rather than for the contention of counsel. Buhagiar J. held in that case that whereas the conviction in the criminal proceedings was no evidence in civil proceedings, the plea of guilty being an admission was admissible.

The appeal is therefore allowed. There will be no order for costs here or in the court below, see section 16(6) Control of Rent Act, 1966. The tenant will deliver up possession of the premises on or before 31st December 1970.

Appeal allowed.

Solicitors: *Arulanandom & Co.; S. A. Lingam.*

LIM YOON FAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) September 4, 1970]

[Perak — Criminal Appeal No. 31 of 1970]

Criminal Law and Procedure — Trial — Sentence — Public interest — Public interest best served if offender induced to turn from criminal ways to honest living.

Penal Code, ss. 392 & 397 — Armed robbery — Sentence — Public interest.

The appellant had pleaded guilty to the offence of robbery under sections 392 and 397 of the Penal Code. The appellant was 20 years 7 months old at the time of the offence and a probation report had been called for. The probation officer reported that the appellant had obviously been misled by his companion in crime. The appellant came from a good family and was training successfully as a motor mechanic. The learned president of the sessions court sentenced him to 30 months imprisonment and 4 strokes of the rattan.

Held, allowing the appeal: in this case the public interest would be best served by helping the offender to turn from criminal ways to honest living and as there was a probability that the appellant would turn a new leaf, if given a chance: the appellant will be put on bond under section 294 of the Criminal Procedure Code (Cap. 6) for 3 years, in the sum of $1,000 in one surety.

Cases referred to:-

(1) *R.* v. *Ball* (1951) 35 Cr. App. R. 164.

(2) *Ho Kim Luan & Anor.* v. *Public Prosecutor* [1959] M.L.J. 159.

MAGISTRATE'S CRIMINAL APPEAL.

F. Arulanandom for the appellant.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J.: The appellant who had in the first place consented to be tried in the sessions court for an offence punishable under sections 392 and 397 of the Penal Code and then pleaded guilty to the charge without defending himself was sentenced to 30 months' imprisonment and 4 strokes of the rattan. He now appeals against the sentence.

The learned president before assessing the appropriate sentence to meet the circumstances of this case and the nature of the offence, on being told that the appellant was 20 years 7 months old at the time of the offence, called for a probation report. In so doing, the learned president was acting, if I may say so, very correctly but beyond noting his age and that the accused was a first offender, he regrettably did not proceed to consider the other contents of the report. They show quite clearly that the accused came from a decent family, with parents who were genuinely interested in his welfare and the welfare of his other brothers and sisters. The report also discloses that the accused had a certain dexterity with his hands and was training satisfactorily as a motor-car mechanic. From his investigations, the probation officer reported that the appellant was obviously misled by his companion in crime.

The facts constituting the offence also disclosed that though the accused and his companion were both armed with knives and they did threaten the complainant with harm unless more money than the $14 with which the accused was charged was produced, no attempt was ever made or would appear to be contemplated to make use of the knives or to inflict harm to the persons of the complainant and his family. Admittedly there was the opportunity to do so but the point is that on the facts as disclosed and as admitted no move in this direction was made.

The learned president stressed the public interest in coming to his decision on sentence and was of the opinion that armed robberies should be discouraged by

a deterrent sentence. With respect, I would agree. But in this case, it seems to me that in safeguarding the public interest, the learned president had, with all respect, not sufficiently considered the full meaning of that passage from Hilbery J. in *R* v. *Ball*[1] which he quoted and is now reproduced:

"In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. *The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living.* Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe."

and in particular the sentence therein which I have emphasized, and applied it to the appellant. A particular criminal may be so induced only by a deterrent sentence of a long term of imprisonment. Another may well profit by being given a second chance. As the Court of Appeal had said in *Ho Kim Luan and Anor.* v. *Public Prosecutor*,[2] at page 162:

"Each case, of necessity, must depend upon its own facts and upon the character and antecedents of the offender."

It is by reason of the character and antecedents of the offender and in the particular circumstances of this case that I propose to allow this appeal, as I feel from reading the probation report and after hearing his counsel and receiving an assurance from his parents, that the appellant will in all probability turn over a new leaf. The sentence is set aside and the appellant will be put on a bond under section 294 of the Criminal Procedure Code (Cap. 6) for 3 years in the sum of $1,000 in one surety.

Appeal allowed.

Solicitors: *Arulanandom & Co.*

ATTORNEY-GENERAL, MALAYSIA v. CHEMICAL WORKERS' UNION OF MALAYA & ANOR.

[O.C.J. (Abdul Aziz J.) September 11, 1970]

[Kuala Lumpur — Originating Motion No. 21 of 1969]

Industrial Law — Industrial relations — Dispute as to recognition of trade union referred to Industrial Court — Earlier ruling by Registrar of Trade Unions allowing workers engaged in the animal feed industry to join a chemical workers union — Whether Industrial Court has jurisdiction to hear dispute — Certiorari — Prohibition — Industrial Relations Act, 1967, s. 8 — Trade Unions Ordinance, 1959, ss. 9, 11, 26 and 27.

The first respondent, the Chemical Workers' Union of Malaya, had written to the Registrar of Trade Unions asking whether they could enrol as their members workers engaged in the animal feed industry and employed by the second respondent company, the Malayan Pharmaceutical Factory Bhd. The registrar after corresponding with the company, ruled that the company's industries were similar to those enumerated in the rules of the first respondent union as giving eligibility for membership and allowed the workers engaged in the animal feed industry to join the union. The company refused to accord recognition to the union and the union thereupon referred the dispute to the Minister who in turn referred the matter to the Industrial Court. The Industrial Court heard the matter and allowed the company an adjournment to enable it to call evidence to show that their products were not similar to those specified in the rules of the union. The Attorney-General applied for an order of *certiorari* to quash the decision of the Industrial Court in the matter and for a further order of prohibition to stay further proceedings in the dispute over the non-recognition of the claim by the company. It was argued (a) that the Industrial Court had no jurisdiction to adjudicate on the dispute although it was referred to it by the Minister or alternatively it had acted in excess of its authority in adjudicating on a matter which is in the executive discretion of the Registrar of Trade Unions; (b) that the Industrial Court had no right to question the decision of the registrar on the question of the similarity or eligibility of the employees of the company to be members of the union and (c) that its decision to allow the company to call evidence was wrong and *ultra vires* its jurisdiction.

Held, dismissing the motion: (1) as soon as the dispute over the non-recognition of the union by the company was referred by the Minister under section 8(4) of the Industrial Relations Act, 1967 to the Industrial Court, the latter is seised with power under section 27 to hear the dispute and make its award relating to all or any of the issues in dispute;

(2) the Industrial Court had not acted in excess of its jurisdiction when it ordered the hearing of the dispute to proceed and allowed the company opportunity to be heard and a chance to call their witnesses, as under section 26 of the Act the court is empowered to take evidence from the parties and their witnesses;

(3) the power of the Registrar of Trade Unions, to declare similarity of trade, occupation or industry is for the purpose of registering a trade union or of approving a federation or application of trade unions but does not extend to a dispute on the question of recognition of workmen under the Industrial Relations Act, nor could it override the powers and jurisdiction of the Industrial Court under the Act.

Case referred to:-

(1) *Kesatuan Perkerja Kenderaan Sri Jaya* v. *Industrial Court & Ors.* [1970] 1 M.L.J. 79.

ORIGINATING MOTION.

Madam L. T. Chua (Federal Counsel) for applicant.

G. Vadiveloo for the 1st respondent.

L. S. Tan for the second respondent.

Cur. Adv. Vult.

Abdul Aziz J.: This is a motion by the applicant for an order of *certiorari* to remove into this court for the purpose of being quashed the decision made by the Industrial Court on July 6, 1969 and for a further order of prohibition to stay further proceedings in the dispute over the non-recognition of the union by the company.

The first respondent is a trade union which by rule 3 of its constitution expressly limits its membership to a certain class or category of workers, the relevant parts of which read: —

"Membership of the union shall be open to all workers ... who are employed by companies manufacturing chemical and pharmaceutical products such as industrial chemicals, including